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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Joint written statement* submitted by France Libertés : Fondation Danielle Mitterrand, American Association of Jurists, Emmaus International Association, non-governmental organizations in special consultative status, Mouvement contre le racisme et pour l'amitié entre les peuples, non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 May 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Violations to the human right to water and sanitation due to the proliferation of the extractive industries in Mexico*

❖ Unfulfilled obligations with regards to the human right to water and sanitation by the Mexican state.

Article 1 of the Mexican Constitution broadens the scope of human rights to which the population of Mexico is entitled, including those contemplated by international conventions signed and ratified by the Mexican state. This article establishes an obligation for all authorities to promote, respect, protect and guarantee human rights. Article 4 establishes that all people have a right to the access, the disposition, and the sanitation of water for personal and domestic consumption in a sufficient, healthy, acceptable, and affordable manner. The State is responsible for guaranteeing this right. However, no regulation for this constitutional right has been enacted and the National Waters Law of 1992, which lacks a human rights perspective, is still in force.

According to the Mexican Constitution, all international conventions on the right to water such as the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights are binding for the Mexican State. The General Comment number 15 of the Committee on Social, Economic, and Cultural Rights establishes the full content of this right and the specific obligations that bind ratifying states to make it effective. [1]

❖ Legal reforms that threaten the right to water and sanitation.

Mining Law

In 1992,[2] Congress passed a new Mining Law that gives preference to this activity over any other possible use or exploitation of land[3]. Mining concessionaires were granted ample prerogatives to gain access to underground mineral wealth with very few restrictions, obligations or sanctions to balance their rights. The right to obtain, under preferential conditions, a water use and exploitation concession in areas within a mining concession figures prominently among this law's biased prerogatives. [4] More than 14% of Mexican territory has been granted as a mining concession.[5] Concessions expire after one hundred years. [6]

Energy Reform

The Energy Reform process of 2013, and the passing of secondary regulation in 2014, allowed the participation of the private sector in various areas of the energy sector. This set of norms prioritizes the operation of extractive projects in detriment of the fulfillment of human rights. [7]

This reform affects the right to water established in the Constitution and international conventions ratified by the Mexican state because it facilitates the exploitation of hydrocarbons through non-conventional methods such as

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[1] Using General Comment Number 15 as a basis, the General Assembly adopted, in 2010, Resolution 64/292, where it established that the right to water is fundamental to the enjoyment of all rights. That year, the U.N. Council on Human rights confirmed state's obligations with respect to the right to access water and sanitation. In 2013, the Council, of which Mexico was part, included fundamental criteria to the right of access to sanitation.

[2] Within the framework of negotiations prior to signing NAFTA.

[3] *Ley Minera*, article 6.

[4] *Ibid*, article 19, fraction VI.

[5] *Segundo Informe de Labores de la Secretaria de Economia*, 2014.

[6] Mining concessions expire after fifty years with the possibility of obtaining an extension for fifty additional years.

[7] On March 20, 2015, civil society organizations denounced these violations before the Inter American Commission on Human Rights within the framework of a thematic hearing granted to them. Mexican authorities were present at these sessions.

fracking. This technique makes an intensive use of water resources and may permanently contaminate subterranean and superficial water sources, affect the quality of soil, and the health of the neighboring population.
The reform and its secondary legislation where passed without free, prior, and informed consultation of indigenous communities and without fulfilling the right to citizen participation through the mechanism of "popular consultation" [8] established by the Constitution for reform on issues considered of national importance [9]. The Hydrocarbon Law establishes that this industry serves "public utility", and that hydrocarbon exploration and exploitation should be considered of "social interest" and "public order", being preferential over any other possible use or exploitation of land. [10]

New water legislation initiatives
The federal Executive and Legislative powers attempted, in 2015, to pass a new General Water Law[11] which, according to the undersigning organizations, is contrary to the standards set by the General Comment no. 15, as well as articles 1 and 4 of the Constitution. Civil society actors publicly denounced that this initiative prioritizes the interests of private individuals over the right to water,[12] which will affect communities' rights to territory. It considers activities such as the exploitation of groundwater deposits, the transfers of water from river basins, or the construction of dams as activities serving "public utility" [13]. Rural communities' right to water could be affected if they were obliged to rent their land[14]. It favors contamination[15] and proposes an unsustainable and unequitable water management model. Thanks to citizen pressure, congressional debate on this piece of legislation was suspended. However, this draft could be passed on an extraordinary congressional period.

- **Cases of development projects that impede the fulfillment of the right to access water for communities in Mexico.**

More than a hundred social conflicts linked to the violation of human rights by mining activities in Mexico were documented. [16] The conflicts in Carrizalillo, Guerrero, Cerro de San Pedro, San Luis Potosí, and Zautla, Ixtacamaxtitlán, and Tetela in Puebla's Sierra Norte are highlighted by this report. There are more than 490 active *fracking* wells in Mexico's East.[17] Furthermore, territories in the states of Chihuahua, Coahuila, Tamaulipas, Veracruz, San Luis Potosí, Hidalgo, Puebla, and Tabasco are threatened by *fracking* projects. [18]
The state of Veracruz, alone, faces 112 hydropower projects that have generated social conflicts.[19] Furthermore, conflicts linked to water transfers from river basin have been identified in the Verde, Pánuco, and Yaqui rivers.
The great majority of these development projects have violated the right to consultation and consent of rural and or indigenous communities. In spite of several judicial victories in favor of communities, effective justice is not attained due to the Mexican government's systematic disregard of judicial sentences.

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[8] *Mexican Constitution*, Article 35, fraction VIII.
[9] The Supreme Court dismissed this citizen petition arguing that the object of contention pertained only a matter of government income. Mexican civil society organizations have appealed the Inter American Human Rights Court to challenge this resolution.
[10] *Ley de Hidrocarburos*, Article 96.
[11] http://www.cmdrs.gob.mx/comisiones/COTLEG/Documents/2015/3a_ordinaria/20150305-II%28ley-agua%29.pdf
[12] *Ibid*, articles 116 and 129.
[13] *Ibid*, article 8.
[14] *Ibid*, article 162.
[15] *Ibid*, articles 39 y 264.
[16] Sol Pérez, *Territorialidades contenciosas en México: El caso de la mega-minería*, UNAM, 2014.
[17] Access to information petitions addressed to Petróleos Mexicanos in 2015, through the *Ley Federal de Acceso a la Información Pública Gubernamental*.
[18] Advanced Resources International, *World Shale Gas and Shale Oil Resource Assessment*, 2013.
[19] Other document cases are the hydropower projects Las Cruces, affecting Cora people in Nayarit or the dams of La Parota in Guerrero, Paso de la Reina in Oaxaca, Ixtantún in Chiapas or Olintla and Aguacatlán in Puebla.

❖ **Criminalization environmental defenders**

Violence and criminalization against human rights defenders by government agencies and private enterprises are widespread and recurrent in Mexico. According to a recent study, between January 2013 and April 2014, 82 attacks against defenders occurred in Mexico.[20]

Our demands to the Mexican state:

Taking into consideration the evidence presented above, the undersigning civil society organizations petition the following parties:

The Special Rapporteur on the human right to safe drinking water and sanitation
The Special Rapporteur on the Rights of Indigenous Peoples
The Special Rapporteur on Human Rights and the Environment
The Special Rapporteur on the Situation of Human Rights Defenders
The Working Group on the Issue of Human Rights, Transnational Corporations and Other Business Enterprises

To exhort the Mexican state, in compliance with ratified international conventions on Human Rights and its own Constitution to:

- Guarantee that legislation and policy on extractive activities that violate the right to water be modified to guarantee the rights to access to information, participation and consultation for indigenous and tribal communities.
- Guarantee that no mining, hydrocarbon, or water-extraction projects as well as electricity generation projects are granted without observance of free, prior, and informed consent of indigenous and tribal communities, with ample fulfillment of their right to self-determination.
- Cease all attacks against human rights defenders and bring all responsible offending parties to justice. Also, to guarantee the effective and opportune application of protection mechanisms for defenders facing risk situations. To develop preventive actions to safeguard the activities of defenders and protect their personal integrity.
- Guarantee the effective fulfillment of judicial ruling in line with the protection of communities against the impacts associated with extractive activities.
- Enact legal reform to prohibit high risk activities, in terms of impacts to the environment and human rights, such as *fracking*.

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*Fundar. Centro de Análisis e Investigación A.C. Alianza Mexicana contra el Fracking Coalición de Organizaciones Mexicanas por el Derecho al Agua Red Mexicana de Afectados por la Minería Espacio DESC Oficina para América Latina de la Coalición Internacional para el Hábitat Freshwater Action Network-México Consejo Tiyat Tlali. Por la Defensa de la Vida y Nuestro Territorio. Asamblea Veracruzana de Iniciativas y Defensa Ambiental. LAVIDA. DECA Equipo Pueblo, A.C Instituto Mexicano para el Desarrollo Comunitario A.C. Promoción y Desarrollo Social A.C. Centro de Estudios para el Desarrollo Rural Centro de Investigación y Capacitación Rural AC Colectivo Hij@s de la Tierra Encuentro Ciudadano Lagunero Chihuahua vs Fracking Tetela hacia el Futuro A.C. Tribu Yaqui. Pueblo

[20]Centro Mexicano de Derecho Ambiental. *Informe sobre ataques a personas defensoras ambientales*, 2014.

Indígena del Norte de México Tribu Guarijios. Pueblo Indígena del Norte de México Movimiento Mexicano de Afectados por las Presas y en Defensa de los Ríos Servicios para una Educación Alternativa. EDUCA Grupo Ecológico Manglar NGOs without consultative status, also share the views expressed in this statement.